



# Department of Municipal Licenses and Inspections

## Zoning Board of Appeals

90 Pond Street – Braintree, Massachusetts 02184

Joseph C. Sullivan  
Mayor

### Meeting Minutes

**January 27, 2009**

**IN ATTENDANCE:** Stephen Karll, Chairman  
Jack Gauthier, Member  
Michelle Lauria, Member  
Jay Nuss, Member  
Joseph Mulligan, Member

**ALSO PRESENT:** Russell Forsberg, Inspector of Buildings/Code Compliance Officer  
Carolyn Murray, Town Solicitor  
Marybeth McGrath, Director of Municipal Licenses & Inspections

**Mr. Karll called the meeting to order at 7:00pm.**

#### **OLD BUSINESS:**

- 1) **Petition Number 08-42**  
**Thomas J. O’Keefe**  
**RE: 105 Brookside Road**

Mr. Forsberg advised the Board that the petitioner requested a 90-day extension of this petition until the April 28, 2009 Zoning Board of Appeals meeting.

On a motion made and approved, the Board voted unanimously to extend the petition until to April 28, 2009.

- 2) **Petition Number 08-60**  
**Stephen Zeboski, Trustee**  
**RE: 20 Mill Lane**

Present: Attorney Frank Marinelli, representing petitioner  
Gary Gabriel, principal of the realty trust  
Sitec Environmental engineer

This is a petition filed by Stephen Zeboski, Trustee, of 10 Kathleen Drive, Holbrook, MA, regarding the property located at 20 Mill Lane in Braintree, MA, in which Mr. Zeboski is seeking relief from the Town of Braintree Zoning By-laws under Chapter 135, Sections 135-402, 403, and 701. Mr. Zeboski seeks variance and a finding pursuant to G.L. c. 40A, §6 to demolish a pre-existing nonconforming factory building in order to construct a commercial building that does not conform to current zoning requirements. The property is located

in a Commercial/Residence C Zoning District as shown on Assessors Plan 3008, Plot 6 and contains 34,275 SF +/- of land.

### **Notice**

Pursuant to notice duly published in a newspaper in general circulation in the Town posted at Town Hall, and by written notice mailed to all parties of interest pursuant to G.L. Chapter 40A, a hearing was held before the Zoning Board of Appeals on January 27, 2009 at 7 p.m. at the DPW Administration Building at 90 Pond Street, Braintree, MA. Sitting on this petition was Chairman, Stephen Karll, and members, John Gauthier and Michelle Lauria. Alternate was Joseph Mulligan

### **Evidence**

The petitioner, represented by Attorney Frank Marinelli, explained to the Board that the applicant is seeking permission to raze an existing nonconforming and dilapidated factory building and to construct a new commercial building that will not conform to all current zoning requirements but will be more conforming than the present structure. Attorney Marinelli explained that the current structure was built around 1880; the lot and the existing factory are pre-existing nonconforming. The lot is nonconforming, containing only 34,275 SF of area where the Zoning By-law requires 40,000 SF. The lot is deficient in lot depth, offering only 156.01 ft. where the Zoning By-law requires 200 ft.

The existing factory building is also nonconforming, providing only 5.77% open space for landscaping where the Zoning By-law requires 25% open space. The existing factory does not meet current setback requirements, as the building is situated 2.6 ft. off the front yard line, while the Zoning By-law requires a setback of 35 ft., and is located 1.7 ft. off the side yard line, while the Zoning By-law requires a setback of 20 ft. In addition, the factory building is situated 28.9 ft. off the rear lot line, while the Zoning By-law requires a setback of 35 ft. The current structure also exceeds the maximum building coverage requirement of 40% by covering 54.98% of the lot. The current lot and structure also fail to satisfy the parking requirement of 23 spaces, as the current structure on the site allows room for only 11 parking spaces. One loading space is also required under the Zoning By-laws, but no loading dock is currently provided.

The proposed building will be two stories, on a footprint of 11,359 SF, for a total of 22,718 SF of area to be used for commercial, warehouse, and a contractor's yard purposes, all of which are uses allowed by right under the Zoning By-law. There will be seven contractor bays in the front and an additional seven contractor bays in the rear. The building will appear to be one story from the front along Mill Lane, but due to the drastic sloping topography in the rear, the building will be two stories in the rear. The proposed building will be nonconforming and will require several variances. The proposed re-development of the site will include removal of some of the existing pavement, thereby creating more open space and landscaping on the site; however, the site will only provide 11.88% open space, doubling the existing 5.77%, but still falling short of the required 25% open space. The proposed building will be located 28 ft. off the front yard line, a marked improvement over the 2.6 ft. setback, yet less than the 35 ft. setback required under the Zoning By-laws. The proposed building will slightly improve the existing side yard setback, offering 1.8 ft., as opposed to the existing 1.7 ft., yet is still far less than the 20 ft. setback required under the Zoning By-laws. The proposed building will be conforming as to the rear yard setback, as the building will be located 36 ft. off the lot line, whereas the Zoning By-law requires a setback of 35 ft. The proposed building improves the lot coverage by nearly 6% over existing conditions, as the proposed site will cover 88.12% of the lot; however, the Zoning By-law limits lot coverage to 75%. The proposed building also decreases the existing building coverage by approximately 21%, as the proposed building will provide 33% building coverage; however, the Zoning By-law limits building coverage to 40%. The proposed re-development of the site will offer more parking than required under the Zoning By-law, as 31 spaces will be provided, yet only 23 spaces are required. Finally, like

the existing structure, the proposed re-development of the site will not provide a loading dock, yet the Zoning By-law requires one loading dock. The corner of the building intrudes into the Residence C Zoning District, yet Attorney Marinelli noted that the intrusion is far less than the existing factory. Accordingly, several variances are required, and to the extent that the proposed building remains non-conforming, a finding that the proposed building is not substantially more detrimental than the existing structure is required.

As grounds for hardship, Attorney Marinelli noted the uniqueness of the lot with its irregular shape, resembling a triangle with the pointed top cut off by the river, and the sloping topography of the site. Referring to the elevation plan prepared by SITEC, Attorney Marinelli advised that the lot has an elevation of 36 feet in front of the building, which slopes to 22 feet, running from south to north across the site. From the east to west side of the lot, the elevations range from 36 feet to a dramatic drop to 14 feet. Attorney Marinelli also noted the presence of wetlands to the rear of the site and commented that the present site allows runoff to flow uncontrolled and unfiltered into the wetlands. The re-development of the site will improve the drainage and contain the runoff. Finally, Attorney Marinelli explained that the existing building in its present form does not lend itself to redevelopment or retrofitting and, for financial reasons, is best suited for a tear-down and redevelopment project. Finally, Attorney Marinelli noted that the proposed building, while still nonconforming, is significantly more conforming in all aspects than the existing factory; thus the new building should not be substantially more detrimental to the surrounding neighborhood.

The Petitioner submitted a plan entitled "Proposed Commercial Building, 20 Mill Lane, Braintree, Massachusetts," dated December 18, 2008 and revised January 12, 2009, prepared by SITEC Environmental engineers of Marshfield, MA.

No one else spoke in favor of or opposition to the petition. Attorney Marinelli submitted letters in support of the petition by abutters, Mary O'Brien of 8 Mill Lane and Paul Holland of 161 Commercial Street. The Planning Board voted 5-0 in favor of the requested relief.

### **Findings**

The Board found that the petitioner had demonstrated hardship based on the irregular shape of the lot, sloping topography of the lot, and the existence of wetlands to the rear of the property. Such hardships owing to the lot make it difficult for the petitioner to comply with the setback requirements. The Board also concluded that the redevelopment of this site, replacing a pre-existing nonconforming building with a more conforming building, that provides more open space, less building coverage, and more parking, would not be substantially more detrimental to the neighborhood. Finally, the Board found that the requested relief could be granted without detriment to the public good and without nullifying or substantially derogating the intent and purpose of the Zoning By-law.

### **Decision**

On motion made by Mr. Gauthier and seconded, it was unanimously voted to grant the requested relief, subject to the plan presented.

### **NEW PETITIONS:**

- 3) Petition Number 09-1**  
**Martin J. and Rita B. Dirrane**  
**RE: 39 Lantern Lane**

Present: Martin J. and Rita B. Dirrane, petitioners

Sitting on this petition was Chairman, Stephen Karll, and members, John Gauthier and Jay Nuss. Alternate was Michelle Lauria.

Chairman Karll advised that the Planning Board voted 5-0 to overturn the opinion of the building inspector.

Chairman Karll further advised that he believed the petitioners were before the Zoning Board of Appeals prematurely, as he believed that the petitioners would need to first apply for a permit, and have it approved or denied.

Chairman Karll advised that the Zoning Board of Appeals cannot make a ruling on an advisory opinion because they have no authority or jurisdiction to make a ruling. Therefore, he dismissed this matter.

Mr. Dirrane requested that the petition be withdrawn without prejudice.

**4) Petition Number 09-2**  
**Metro PCS**  
**RE: 35 Roc Sam Park**

Mr. Forsberg advised the Board that the petitioner requested a 30-day extension of this petition until the February 24, 2009 Zoning Board of Appeals meeting.

On a motion made and approved, the Board voted unanimously to extend the petition until to February 24, 2008.

The meeting adjourned at 7:40pm.